the assertion is merely added for the purpose of giving jurisdiction.[7] Accordingly, it would appear necessary that the property rights be not remote. Yet the Supreme Court held in a leading case that in boundary disputes between the states, the state's right of escheat to the property within its borders is a sufficient property right to render the question one for the judiciary, and that the sovereignty and jurisdiction of the states is merely incidental to the property rights involved.[8] The English cases relating to counties palatine [9] and to colonial governments [10] are cited as authority for this position. But in those cases the English courts had jurisdiction, not of causes between states, but of causes arising out of agreements between English subjects, who, when residing within the jurisdiction of the English courts, were, as English subjects, amenable to the processes of those courts. It is further reasoned [11] that a political question becomes a judicial one when submitted to the courts; but this reasoning should not have been applied where the defendant state submitted to the court's process by appearing and pleading, and then later moved a dismissal for want of jurisdiction.[12] The decision of the Supreme Court that its jurisdiction extends over boundary disputes between the states is settled law.[13] It is submitted, however, that the dissenting opinion of Chief Justice Taney [14] in the leading case contains the preferable view — that such disputes are political questions where the suit is not brought to try a right of property in the soil, but is rather brought to enforce the mere political jurisdiction of the state.

Distribution of the Proceeds of Securities of Different Classes of Customers Wrongfully Pledged by a Broker. — It is the practice for a broker buying shares of stock on margin for a customer to have them registered in his own name, and he is impliedly authorized to pledge them to an amount not greater than that due him from his principal.[1] Similarly he has power to hypothecate shares indorsed to him in blank as collateral for an advance.[2] If he sells the stock or pledges it to an amount greater than his principal's obligation, without having in his possession or under his control other stock of the same description to replace it, he is guilty of a conversion.[3] Most courts, following New York, describe the relation of the broker to his customer as that of pledgor and pledgee.[4] The Massachusetts cases hold that only a contractual relation is established.[5]

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[7] Georgia *v.* Stanton, 6 Wall. (U. S.) 50.
[8] Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657, 734. See also Georgia *v.* Stanton, *supra.*
[9] Derby *v.* Athol, 1 Ves. 201; Bishop of Sodor and Man *v.* Derby, 2 Ves. 337, 355.
[10] Penn *v.* Baltimore, 1 Ves. 446; Nabob of the Carnatic *v.* E. India Co., 1 Ves. Jr. 370.
[11] Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657, 737.
[12] *Cf. ibid.* 719.
[13] New York *v.* Connecticut, 4 Dall. (U. S.) 4; New Jersey *v.* New York, 5 Pet. (U. S.; 284; U. S. *v.* Texas, 143 U. S. 621; Virginia *v.* West Virginia, 11 Wall. (U. S.) 39, 53; Mississippi *v.* Louisiana, 202 U. S. 1. See also 16 Harv. L. Rev. 134.
[14] Rhode Island *v.* Massachusetts, *supra*, 752, 754.

[1] Skiff *v.* Stoddard, 63 Conn. 198.
[2] Lawrence *v.* Maxwell, 53 N. Y. 19. It is hardly necessary to add that a stockbroker is guilty of a conversion if he hypothecates stock which he holds as bailee. Tomkins *v.* Morton Trust Co., 91 N. Y. App. Div. 274.
[3] Tausig *v.* Hart, 58 N. Y. 425; Douglas *v.* Carpenter, 17 N. Y. App. Div. 329. For a discussion of this point, see 5 Am. Lawyer 573.
[4] Markham *v.* Jaudon, 41 N. Y. 235; Skiff *v.* Stoddard, *supra.*
[5] Covell *v.* Laud, 135 Mass. 41. For a discussion of the relation existing between broker and principal in margin transactions, see 19 Harv. L. Rev. 529.

Under the former view an interesting question arises as to the rights of the parties when a broker, before his insolvency, has pledged stock of his own, together with that of his customers, to a *bona fide* pledgee for value. It must be clear that the parties are estopped to deny the right of the pledgee to be protected to the extent of his loan, since he has changed his position in good faith, relying on the apparent title of the broker.[6] It is submitted that the relation of the parties is analogous to that of a suretyship. The subpledgee may on default of his principal look to the securities for satisfaction of his claim, and the owners of the securities in turn have a right of reimbursement against the broker.[7] If the owners of the stock all stand in the same relation to the broker — for example, if they have all deposited stock with him as collateral for advances — the problem becomes a simple one of suretyship. Equity will see that the securities are applied by the subpledgee *pari passu* in payment of his loan.[8] And if the subpledgee in ignorance of the claim of the true owners sells the securities belonging to one, leaving the others' undisposed of, it will be decreed that they be sold and the proceeds so applied that the burden of the loss be borne proportionately by all, in accordance with the right of a surety to seek contribution from his co-sureties.[9]

A more difficult question arises where the parties whose securities have been wrongfully pledged do not stand on the same footing. Such is the case where a broker pledges, wrongfully as before, his own stock together with that of A which he held for sale or as a simple bailee, that of B which he held as collateral for advances, and that of C, purchased on margin. A recent New York case, following an earlier decision,[10] held that after the *bona fide* pledgee had satisfied his claim out of the proceeds of a sale of the securities, A was entitled to priority on what remained for the entire value of his stock. *Matter of Mills*, 39 N. Y. L. J. 761 (N. Y., App. Div., May, 1908). This, it is submitted, is correct on principle. It must be presumed that the broker intended that his own securities should be applied before recourse was had to the stock of the co-sureties;[11] and though the broker has been guilty of a conversion as to A, B, and C, yet A, who did not impliedly authorize re-hypothecation, should have a right in equity to demand that the subpledgee first apply to the satisfaction of his claim stock authorized to be repledged.[12]

RESCISSION OF INSURANCE CONTRACTS WITHOUT RESTITUTION. — It is a general rule that there can be no rescission of a contract unless the parties can be put in *status quo*.[1] The right to rescind is equitable, and since equity will not permit a forfeiture the rescinding party must restore anything he has

6 McNeil *v.* Tenth Nat'l Bank, 46 N. Y. 325.

7 McNeil *v.* Tenth Nat'l Bank, *supra;* Farwell *v.* Importers Nat'l Bank, 90 N. Y. 483; Smith *v.* Savin, 141 N. Y. 315.

8 Skiff *v.* Stoddard, *supra*, 225, 226.

9 Gould *v.* Central Trust Co., 6 Abb. N. C. (N. Y.) 381. See Colebrook, Collateral Securities, 326; Jones, Pledges, 512.

10 Willard *v.* White, 56 Hun (N. Y.) 581.

11 Myers *v.* Merchants Nat'l Bank, 16 N. Y. Supp. 58; Le Marchant *v.* Moore, 150 N. Y. 209; Smith *v.* Savin, *supra.*

12 Skiff *v.* Stoddard, *supra;* Willard *v.* White, *supra;* Harmon *v.* Sprague, 163 Fed. 486; Tompkins *v.* Morton Trust Co., *supra.*

1 Byard *v.* Holmes, 4 Vroom (N. J.) 119; Gay *v.* Alter, 102 U. S. 79; Handforth *v.* Jackson, 150 Mass. 149.